IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6603 OF 2008

Smt. Mangalabai Shantilal Darda }
Age : 48 Years, Occ. : Business }
R/o : Thalner, Tq. : Shirpur, }
Dist. : Dhule. } **.... PETITIONER**

V E R S U S

1. The State of Maharashtra }
Through Principal Secreatary }
Food, Civil Supplies and }
Consumer Protection Department }
Mantralaya, Mumbai. }
2. The Hon'ble Minister for }
Food, Civil Supplies and }
Consumer Protection Department }
Maharashtra State, }
Mantralaya, Mumbai. }
3. Divisional Commissioner }
(Food & Civil Supplies) }
Nasik Division, Nasik. }
4. The Additional Collector, }
Dhule, Dist. Dhule. }
5. The District Supply Officer }
Dhule, Dist. : Dhule. } **.... RESPONDENTS**

6. Tahsildar, Shirpur, }
Tq. Shirpur, Dist. Dhule. }
7. Hukumchand Motilal Sethiya }
Age : Major, Occ. : Business, }
R/o : Holnanthe, Tq. Shirpur, }
Dist. : Dhule. } **.... RESPONDENTS**.

Mr. P.M.Shah, Sr. Counsel instructed by
Mr. D.S.Bagul , Advocate for Petitioner.
Mrs. V.A.Shinde, A.G.P. for State-Resp.Nos. 1 to 6.
Mrs. Deshmukh holding for Mr.V.D.Salunke, Advocate for Respondent no. 7.

[CORAM : S.S.SHINDE, J.]
DATE : 10/09/2009.

JUDGMNENT :

1. This Writ Petition takes exception to the Order dated 24/10/2008 passed by the Respondent no. 2 – Minister for Food, Civil Supplies and Consumer Protection Department, Mantralaya, Mumbai in Review Application No. VAN.1404/P.K./295/N.P.23.

2. The back-ground facts for filing the present Writ Petition as disclosed in the memo of the Writ Petition are as under.

In 1989, Kerosene Semi wholesale dealer licence No. 9 of 1989 came to be granted in favour of petitioner. It is further case of the petitioner that, at present, the petitioner is getting 65 K.L. Kerosene

quota from the State Govt. and at present 41 retailers are attached to the petitioner.

In the year 1997 in Shirpur Taluka, there were 7 semi wholesale dealers distributing kerosene through out Shirpur taluka.

On 11/3/1999, respondent no. 7 Hukumchand Motilal Sethiya, by his application dated 11/3/1999, requested the respondent no. 6 to cancel his semi wholesale dealer licence and thereby surrendered his semi wholesale licence. On 20/6/1999, respondent no. 6 after following due procedure, cancelled the licence and given kerosene quota to the respective wholesalers.

After about 5 years, respondent no. 7 herein applied before the respondent no. 5 for re-issuance of semi wholesale dealer kerosene licence. Respondent no. 5 – the District Supply Officer vide its order dated 7/7/2004, rejected the said application submitted by respondent no. 7. Thereafter, respondent no. 7 filed Appeal before the Divisional Commissioner, Nasik , which came to be rejected on 26/7/2004.

Respondent no. 7 filed Revision application before the Minister for Food & Civil Supplies and Consumer Protection Department. By order dated 8/9/2004, the Hon'ble Minister rejected the said Revision application filed by respondent no. 7.

3. Thereafter, again respondent no. 7 filed review application before the State of Maharashtra. The present respondent no. 2, the Minister by its Order dated 24/10/2008 is pleased to allow the review

application filed by respondent. Hence, this Writ Petition.

4. The learned Sr. Counsel appearing for the petitioner submitted that, it is a matter of record that the area of operation of respondent no. 7 was village Holnanthe and area of operation of the petitioner is village Thalner, which is near to village Holnanthe. Considering the territorial suitability and geographical convenient to the retailers , the respondents authorities attached the retailers of village Holnanthe to the petitioner. Therefore, the learned Sr. Counsel would submit that the present petitioner is aggrieved person by the impugned order passed by the Minister in review. The learned Sr. Counsel further submitted that after more than 5 years from the date of Order passed by Respondent no. 6 cancelling the kerosene semi wholesale licence of the respondent no. 7, the respondent no. 7 applied before the respondent no. 5 for re-issuance of kerosene semi wholesale licence in his favour. It is further submitted that after considering the factual aspects of the matter and after considering the relevant provisions of law, respondent no. 5 District Supply Officer vide its order dated 7/7/2004, rejected the said application submitted by respondent no. 7. Learned Sr. Counsel further submitted that the order passed by the Divisional Commissioner, Nasik and the Order passed by the Minister, has not been challenged by the respondent no. 7 by way of filing Writ Petition before this Court. The learned Sr. Counsel further submits that the hearing of the review was held before the Minister on

27/6/2006 and after more than 2 years from the date of hearing, the impugned Order dated 24/10/2008 is passed. According to the learned counsel, the Minister has mis-interpreted the provisions of Clause 15 of the Maharashtra Kerosene dealers (Licence) Order, 1966. According to learned Sr. Counsel, the review application which was filed by the respondent no. 7 herein was not competent on the date of filing , since there was no provision for filing review application once the revision is rejected. Learned Sr. Counsel invited my attention to the provisions of clause 15 of the Maharashtra Kerosene Dealer (Licence) Order, 1966 and submitted that the review application filed by respondent no. 7 was not competent since on the date on which it was filed, there was no provision for filing review application, once revision is rejected by the Minister. Therefore, the learned Sr. Counsel would submit that the impugned order passed by the Minister on the face of it, is not sustainable. The learned Sr. Counsel further invited my attention to the procedure prescribed for granting licence and submitted that the Minister by entertaining the review application, can not grant licence straight way without following the procedure prescribed under the relevant rules and, therefore, on that count also, the impugned Order deserves to be set aside.

5. The learned Sr. counsel further submitted that though the present petitioner was aggrieved by the Order of the Minister, he was not given any opportunity to putforth the case of the petitioner or other

persons on whom, the order directly affects. It is further submitted that if the licence of the respondent no. 7 is restored or being given, then in that event, it is the semi wholesalers from Dhule will be affected and, therefore, kerosene quota will be reduced. Hence, it was incumbent upon the Minister to hear all these affected persons including the present petitioner. It is further submitted that the Minister has not even considered the meaning of ' resignation '. It is further submitted that once resignation is accepted by the competent authority, then the person who has given resignation, has no power in law to withdraw his resignation. Once the resignation is accepted, there is no deeming fiction that the resignation can not be withdrawn by any tactics. Therefore, the learned Sr. Counsel further invited my attention to paragraph 14 of the petition and submitted that while giving licence, there is procedure laid down by which new licence can be given. The learned counsel further invited my attention to the pleadings in the petition, annexures thereto and submitted that this Writ Petition deserves to be allowed.

6. Learned counsel appearing for respondent no. 7 submitted that the present petitioner is not aggrieved person and, therefore, once he is not aggrieved person, this Writ Petition can not be entertained. The learned counsel also supported the reasons recorded by the Minister while allowing the review petition.

7. Learned A.G.P. appearing for the State tried to submit that review before the Minister was maintainable and the Minister has rightly allowed the review. Learned A.G.P. further invited my attention to the averments in the affidavit in reply and submitted that the Petition is devoid of any merits and same deserves to be dismissed and, therefore, this Court may pass suitable order as deemed fit in the facts of this case. Learned A.G.P. further submitted that in case, this Court comes to the conclusion that the petitioner and other aggrieved persons are not heard by the Minister, the State Govt. is ready to hear them and then pass necessary orders.

8. After hearing learned Sr. Counsel for the petitioner, learned counsel for respondent no. 7 and learned A.G.P. appearing on behalf of respondent no. 1 to 6, I am of the considered view that this Writ Petition deserves to be allowed.

9. Firstly, the date on which the review application was filed by the petitioner, it was not competent and said review petition was not maintainable. There was no specific provision for filing review application, once revision is rejected by the Minister. Therefore, the Minister has entertained the review, for which there was no provision to file the same during the relevant period. When there is no specific provision for filing the review on the relevant date, the Minister should have rejected the said review application merely on the ground that

same is not maintainable. Therefore, the Order passed by the Minister entertaining the review application is not sustainable at all. Apart from that, I find considerable force in the submissions of the learned Sr. Counsel for the petitioner, that while granting licence, there is proper procedure prescribed for allotment of the licence and by giving go-bye to such procedure, no licence can be given. It is also important to note that, the petitioner and other aggrieved persons were not heard by the Minister when review application filed by the respondent no. 7 was entertained. Though, the learned counsel for respondent no. 7 tried to contend that the petitioner was not aggrieved person, in view of pleadings in paragraph 7 and 8 of the Writ Petition, I am of the considered view that, the petitioner was aggrieved person and, therefore, it was incumbent on the Minister to hear him. The petitioner has demonstrated in the petition that he was aggrieved person. It is not necessary to refer to the subsequent amendment by which the review or revision can be filed before the Minister. By way of amendment, now Maharashtra Kerosene Dealers (Licence) Act, 1966, clause 15 (1) is re-numbered as clause 1 (a) sub clause (1) (b) and sub clause 1 (c) by Notification No. ECA 1007/CR/229/CS/23 on 4/7/2007, by which review or revision is provided. The said notification is applicable w.e.f. 4/7/2007. In the instant case, the Minister himself has heard the review application somewhere in 2006. That pre-supposes that Revision was filed before it was heard by the Minister. Therefore, on the date on which the Revision was filed and heard by the Minister,

thee was no provision for filing review application once the Revision is rejected by the Minister.

10. For all these reasons, Writ Petition is allowed in terms of prayer clause ‘ B ’. Rule is made absolute. Civil Application, if any, stands disposed of in view of disposal of main Writ Petition.

[S.S.SHINDE]
JUDGE

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